

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,)	
)	
Plaintiff,)	
)	C.A. No. 22-1377-MN-JLH
v.)	
)	JURY TRIAL DEMANDED
MASIMO CORPORATION and)	
SOUND UNITED, LLC,)	
)	
Defendants.)	
<hr style="border: 0.5px solid black;"/>		
MASIMO CORPORATION,)	
)	
Counter-Claimant,)	
)	
v.)	
)	
APPLE INC.,)	
)	
Counter-Defendant.)	

**DECLARATION OF BENJAMIN N. LUEHRS IN SUPPORT OF PLAINTIFF APPLE
INC.'S REPLY IN SUPPORT OF ITS MOTION FOR AN EXPEDITED TRIAL**

I, Benjamin N. Luehrs, declare and state as follows:

1. I am an attorney at the law firm Desmarais LLP, counsel of record for Plaintiff Apple Inc. ("Apple") in the above-captioned case. I am licensed to practice law by and in good standing with the Bars of the States of Connecticut and Minnesota. I submit this declaration based on personal knowledge, and if called upon as a witness, could competently testify to the truth of each statement herein.

2. I submit this declaration in support of Apple's Reply in Support of Its Motion for an Expedited Trial, submitted concurrently herewith.

3. On February 23, 2023, I visited Masimo's website, <https://www.masimopersonalhealth.com/products/masimo-w1>, to purchase a W1 watch. **Exhibit 1** is a true and correct copy of that webpage as it appeared on February 23, 2023.

4. As seen in **Exhibit 1**, the following image of the W1 watch appeared on the above webpage where the W1 was offered for sale by Masimo on February 23, 2023:



5. I proceeded to order a W1 watch. **Exhibit 2** is a true and correct copy of the confirmation email that I received on February 23, 2023, for my order (order #24735).

6. **Exhibit 3** is a true and correct copy of the confirmation email that I received on February 27, 2023, that the W1 (order #24735) had shipped. The package's tracking number was 395117521650.

7. I received the W1 watch (order #24735) on February 28, 2023. **Exhibit 4** is a true and correct copy of an iPhone screenshot of a summary of the shipment log for the W1 watch.

8. **Exhibit 5** is a true and correct copy of a photo that I took of the FedEx package that I received on February 28, 2023, containing the W1 watch. The FedEx package displays the 395117521650 tracking number.

9. **Exhibit 6** is a true and correct copy of a photo that I took of the front of the box containing the W1 watch that I ordered. **Exhibit 7** is a true and correct copy of a photo that I took of the back of the box.

10. **Exhibit 8** is a true and correct copy of a photo that I took of the charger that came with the W1 watch I ordered.

11. **Exhibit 9** is a true and correct copy of a photo that I took of the front of the W1 watch I ordered.

12. **Exhibit 10** is a true and correct copy of a photo that I took of the back the W1 watch I ordered. As shown below, the back of the W1 watch depicted on Masimo's website on February 23, 2023 is not the same as the W1 watch that Masimo sold to me on February 23, 2023.

W1 watch offered on February 23, 2023	W1 watch sold on February 23, 2023
	

I declare the foregoing to be true and correct under penalty of perjury.

Dated: March 3, 2023

By: /s/ Benjamin N. Luehrs
Benjamin N. Luehrs

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